

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

IN RE:

CHICAGO BOARD OPTIONS EXCHANGE  
VOLATILITY INDEX MANIPULATION  
ANTITRUST LITIGATION

*This Document Relates to All Actions*

18-cv-4171

MDL No. 2842

Honorable Manish S. Shah

**JOINT APPLICATION FOR RE-APPOINTMENT OF  
PLAINTIFFS' LEADERSHIP COUNSEL**

The Court previously appointed certain counsel into leadership and steering committee positions for a one-year term. ECF Nos. 119, 120, 241. The Court determined that those appointments would “best represent the variety of named plaintiffs, products, and potential theories of liability.” ECF No. 119. That statement is as true today as it was then. Accordingly, the undersigned hereby submit this application to maintain the status quo by (re)-making the following appointments:

<b>Co-Lead Counsel</b>	<b>Steering Committee</b>
Kimberly A. Justice <sup>1</sup> Freed Kanner London & Millen LLC 923 Fayette Street Conshohocken, Pennsylvania 19428	David C. Frederick Kellogg Hansen Todd Figel & Frederick, PLLC 1615 M Street NW, Suite 400 Washington, DC 20036
Jonathan C. Bunge Quinn Emanuel Urquhart & Sullivan, LLP	Hilary K. Scherrer Hausfeld LLP

<sup>1</sup> At the time of the initial appointment, Ms. Justice was with the law firm of Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”). Her appointment as Co-Lead Counsel continued after joining Freed Kanner London & Millen LLC, though in April 2019, the Court appointed Sharan Nirmul of Kessler Topaz to the Steering Committee. *See* ECF No. 241. Kessler Topaz has indicated that it is not joining this motion and intends to request that the Court add Mr. Nirmul as a *third co-lead* counsel. The undersigned have not yet seen that application but will be prepared to respond promptly if it is made.

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Michelle C. Clerkin<sup>2</sup>  
Motley Rice LLC  
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Sharan Nirmul  
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Co-Lead Counsel have fulfilled the *Duties and Responsibilities* outlined in the appointment order (*see id.* at 2, 4). Among other things, we have worked cooperatively to develop the case strategy; conducted detailed research and analysis of the potential claims; retained and worked extensively with factual and statistical experts; invested considerable time and resources into drafting the complaints; developed a discovery plan and requested early access to such materials; responded to CBOE's motion to dismiss after still-more factual and legal research; drafted the consolidated amended complaint; developed and commissioned multiple new expert analyses for the consolidated amended complaint; and appeared before the Court for four status conferences and three motion hearings.

For its part, the Committee provided comments and edits to key pleadings and motions to date. The Committee also carried out several research projects and provided input into the theories of the original and consolidated amended complaint. The undersigned agree that Co-Lead Counsel and the Committee members have worked well together to best represent Plaintiffs

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<sup>2</sup> The Court initially appointed Erin Durba, but she subsequently left Motley Rice LLC and the relevant practice area. The Court appointed Ms. Clerkin to take Ms. Durba's place. ECF No. 178.

and the class in this matter. Where a leadership structure is working well, courts routinely renew appointments.<sup>3</sup>

The importance of continuity and the value of developed institutional knowledge are particularly apparent in *this* case at *this* time. Plaintiffs are not riding the coattails of detailed government indictments; the initial, 89-page, 200-paragraph consolidated complaint was the result of Co-Lead Counsel’s extensive legal and factual investigation, in consultation with the Committee. It required working closely with multiple industry and economic experts, as well as extensive legal research, to develop theories of liability and damages that would best withstand CBOE’s scrutiny. Even more institutional knowledge was developed as Counsel worked through the initial request to expedite discovery, and to respond to CBOE’s first motion to dismiss.

It merits emphasis that our current term is expiring just before CBOE will be moving to dismiss the amended complaint that we developed. It would be highly inefficient—and likely, far less effective—to have one set of counsel create a detailed, expert-driven amended complaint, and then give responsibility for defending that complaint to someone else.

For instance, with respect to the motive allegations in the recently filed amended complaint, Co-Lead Counsel identified new sources of information and conducted new analyses regarding the benefits that CBOE received from the Doe Defendants’ manipulation. The amended complaint explains how CBOE deliberately chose a process knowing it would be open to manipulation. And it did so because it wanted a process that would entice liquidity providers by way of its “replicability.” Based on additional statistical work, the recently filed amended

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<sup>3</sup> See, e.g., *In re Dealer Mgmt Sys. Antitrust Litig.*, No. 18-cv-00864, at \*1 (N.D. Ill. Apr. 24, 2019) (ECF No. 644); *In re Testosterone Replacement Therapy Prod. Liab. Litig.*, No. 14-cv-01748, at \*1 (N.D. Ill. Sept. 8, 2016) (ECF No. 1570).

complaint also alleges that CBOE saw a 753% increase in fees during the settlement window, and a 60% increase in fees on certain days, by making the key switch to an extremely “replicable” process. The amended complaint also explains how the data show patterns that CBOE itself has flagged as being the tell-tale signs of manipulation. Co-Lead Counsel developed these allegations, in consultation with the Committee; it would not serve the class to put some other counsel in charge of explaining their accuracy, relevance, and sufficiency in response to CBOE’s upcoming motion to dismiss.

Similarly, Co-Lead Counsel worked with several experts to buttress the prior allegations that Plaintiffs were harmed by CBOE’s wrongdoing. Based on still-more statistical analyses, as well as a deeper dive into the named Plaintiffs’ trading records, the amended complaint lines up numerous examples of how these Plaintiffs were harmed by already-identified instances of manipulation. And based on an extensive review of the academic literature, the amended complaint explains why these harms flow from the alleged misconduct. Again, it would be highly inefficient to expect some other counsel (or group of counsel) to get up to speed as to the history and relevancy of these new allegations.

In sum, Co-Lead Counsel have steeped themselves in this extremely complex case for more than a year now. The Committee has also gained substantial experience in the facts and issues involved. The undersigned thus respectfully request the Court extend all existing appointments for another year, or for any other time period the Court deems appropriate.<sup>4</sup>

Dated: July 31, 2019

Respectfully Submitted,

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<sup>4</sup> The following additional counsel for plaintiffs named in the Consolidated Amended Class Action Complaint support this Joint Application for Re-Appointment of Plaintiffs’ Leadership Counsel: Cohen Milstein Sellers & Toll PLLC; Labaton Sucharow LLP; Robins Kaplan LLP; and Safirstein Metcalf LLP.

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*Plaintiffs' Steering Committee Members*

**CERTIFICATE OF SERVICE**

I, Jonathan C. Bunge, hereby certify that on July 31, 2019, I electronically filed the foregoing document using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of Record.

Dated: July 31, 2019

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